

*Oil and Petroleum*

because I must confess that I am at a loss in understanding it. The clause reads:

This act is binding on Her Majesty in right of Canada and in right of any province.

Whenever I am confronted with legal terminology, I find myself somewhat at sea. I therefore appeal to the minister, as a distinguished member of the bar—I said “of the bar”, not “at the bar”—to explain exactly what it means. I find it difficult to understand just how an act of this parliament can be binding on Her Majesty in the right of a province. Maybe this is the type of terminology that is used from time to time, but I have not come across it. Before the minister gets into the ramifications of the amendment being proposed, either with respect to its acceptability or its substance, I think all of us would be able to make a much more intelligent judgment on the matter if he would begin by explaining clause 3.

● (1530)

**Mr. Macdonald (Rosedale):** As the committee knows, the bill provides for certain charges to be made under part I and also for certain compensation to be paid under part IV, and among the entities which will be subject to export charges under part I will be any agencies of the Crown in right of Canada, for example, Petro-Canada when it comes into existence or of the provinces which may be engaged in the export of commodities chargeable under the bill. The clause is similar to section 9 of the Excise Tax Act, Revised Statutes of Canada, 1970, chapter 12, and is necessitated first by the provisions of section 16 of the Interpretation Act which provides as follows:

No enactment is binding on Her Majesty or affects Her Majesty or Her Majesty's rights or prerogatives in any manner except only as they are therein mentioned or referred to.

It is, of course, Her Majesty in right of Canada who is being referred to in this situation, so the first part of clause 3 saying the act is binding on Her Majesty in right of Canada is in response to section 16 of the Interpretation Act which requires parliament specifically to state how the rights of Her Majesty are affected. I will go on to complete the circle with regard to Her Majesty's participation. As the committee knows, parliament is made up of three parts—this House, the other place and the assent of Her Majesty in parliament. In due course the Crown will be asked to assent to whatever enactment is produced by the two chambers.

When we go on to deal with the second part of the sentence, “and in right of any province”, we are really getting to the amendment put forward by the hon. member for Qu'Appelle-Moose Mountain. The position, basically, is similar to that under section 9 of the Excise Tax Act: the Crown in right of Canada, acting within its jurisdiction, has full authority to bind the Crown in right of any province or any entity of the Crown in right of any province. This is a position which is well established in the jurisprudence. I think I am right in citing the Gold Seal case as an example—the imposition of federal Customs tariffs on provincial Crown corporations.

To put it the other way around; in other words, where the Government of Canada has jurisdiction under the British North America Act, a province cannot defeat the exercise of that jurisdiction by taking an activity out of

private hands and putting it in the hands of a provincial Crown corporation. I feel this deals with the case of the royal prerogative. The legislative jurisdiction of the Parliament of Canada applies equally to a transaction whether it is in the hands of a private individual or a Crown entity in a province. I trust I have shown satisfactory reason and authority for extending this to the Crown in right of any province.

Dealing now with the terminology of the amendment itself, I would say the amendment is redundant in the sense that it makes no valid legal addition to the bill. It really purports to extend the jurisdiction of the Parliament of Canada. If it were found that the jurisdiction of the Parliament of Canada did not extend beyond a certain point, the amendment would purport, by the consent of Her Majesty in right of a province, to extend that jurisdiction. However, under our constitution it is not possible for the act of one parliament, of one level of jurisdiction, to extend the jurisdiction of another level.

It is possible to delegate a particular responsibility, as in the case of the Motor Vehicle Transport Act, or in such a manner as was sanctioned by the courts in connection with the Prince Edward Island potato marketing legislation; but the hon. member is not proposing a delegation of that kind. The amendment purports to say that if the Government of Canada does not possess jurisdiction, the province can allow jurisdiction by consent. It is well established that this cannot be done. The only way by which jurisdiction could be added to the federal government or taken from the province would be by way of an amendment to the British North America Act, carried out in this case by the parliament at Westminster. In this case I would argue that the amendment should not be agreed to: it is redundant; it attempts to do something which is not in the power of either this House or the provincial legislation to do.

**Mr. Andre:** I have a question for the minister concerning one aspect of clause 3 relating to the powers it would seek to exercise over Her Majesty in right of a province. Clause 89 in part V, at page 36 of the bill, gives the minister or his agent the right to enter any premises in which he has reason to believe there may be evidence of contravention of the act; it gives him, also, authority to seize records, to carry away such records, and so on. These rights being binding on Her Majesty in right of the province, it concerns me that under the terms of the clause the minister or his designate may enter the office of the premier of a province, seize his records and do all the things which clause 89 provides. The likelihood of this happening may be remote, but I think it would be extremely ill-advised for us in this assembly to pass any legislation which provided for such a possibility.

**Mr. Macdonald (Rosedale):** I think the hon. member is referring to clause 89 (1)(b). That is the authority to enter premises and seize documents, the kind of authority which is also found in taxation statutes such as the Excise Tax Act to which I have referred. It is true that since the law speaks in general terms, it would, of course, apply to any provincial entity which was covered by the provisions of the statute. I suppose the premier of a province could choose to carry on the buying and selling of petroleum products from his own office. However, in fact, in Alberta

[Mr. Douglas (Nanaimo-Cowichan-The Islands).]